

**In the High Court of Uttaranchal, at
Nainital.**

A.O. No. 1617/2001

(Old No. 238/1983

State of U.P. through Divisional Forest Officer
Central Tarai Forest Division,
Haldwani, District Nainital ... Appellant.

Versus

Rajendra Prasad Pant S/o Mathura Dutt
Pant, Lecturer of Mathematics D.S.B. College
Kumaon University Nainital .. Respondent.

Sri Nand Prasad, learned Standing Counsel for the
Appellant.
Sri B.D. Pande, learned counsel for the respondent.

Hon'ble B.C. Kandpal, J.

This Appeal from Order, U/S 110-D of the Motor Vehicles Act, has been preferred against the Motor Accident Claims Tribunal/Special Judge, Nainital, in M.A.C.P. No. 87/1981, Rajendra Prasad Pant Vs. State of U.P., whereby the claim petition was allowed for award of compensation to the tune of Rs. 30,600/- against the State of U.P. with costs and interest *pendente lite* and future @ 6% per annum.

2- Brief facts giving rise to this appeal are that on 20-6-1981 at about 7 P.M. the respondent Rajendra Prasad Pant, a lecturer in D.S.B. College, Kumaon University, Nainital, was standing in front of betel shop of Govind Singh, near Brooke Hill Hostel. Suddenly station wagon car bearing registration DLV 9348 owned by Forest Department of the U.P. Government came there from A.T.I. side. It was being driven by Mohan Singh in very rash, negligent and

careless manner and it struck against the respondent Rajendra Prasad, causing grievous injuries to him and thereafter the jeep hit the pucca stone wall. After the accident the injured was rushed to B.D. Pande, Hospital, where it was found that the injuries were dangerous to the life, therefore, he was put under operation. The hip region of the injured had been completely destroyed by the injuries. The doctors advised him to shift himself in some well equipped hospital like AIIMS. New Delhi. On 6-7-1981 he was taken in an Ambulance from Nainital to A.I.I.M.S. New Delhi. There he undergone number of painful operations. It was also alleged that the injured was as a Lecturer with a condition that he would complete his Ph.D. within five years of his appointment, otherwise all his increments will be stopped. Due to injuries he has become bed ridden and unable to appear in final examination. It was also alleged that the injured suffered great mental agony and paid due to the accidental injuries suffered by him. In this way he claimed total amount of compensation of Rs. 6,50,000/-.

3- The respondent State of U.P. filed W.S. and alleged that the offending vehicle belongs to the Forest Department. The accident was admitted by the respondent/appellant, but the negligence and rashness of its driver was denied. It was also alleged that due to mechanical failure the accident occurred. The State denied its liability to pay the compensation.

4- On the basis of pleadings adduced by the parties, the following issues were framed by the Tribunal:-

1. Whether the accident in question took place due to the rash and negligent driving of the station wagon car No. DLV 9348?
2. Whether due to any mechanical failure the brakes of the aforesaid station wagon car were rendered inoperative as alleged?. If so, its effect?.
3. To what amount of compensation, if any, is the petitioner entitled?.

5- The claimant in support of his claim produced P.W.1, Dr. B.S. Pangthi, P.W.2, Dr. H.N. Bahadur, P.W.3, K.C. pandey, P.W.4, Govind Singh and himself as P.W.5. The appellant/O.P. produced Gurbir Singh, D.W.1, Lali Chandra D.W.2 and Bishan Ram, D.W.3.

6- The learned Tribunal, on hearing the learned counsel for the parties and perusing the evidence brought on record by the parties, awarded Rs. 30,600/- as compensation to the claimant, along with 6% per annum *pendentelite* and future interest, payable by the State of U.P. with cost.

7- Feeling aggrieved, the State of U.P. has preferred this appeal before the Allahabad High Court, which has been transferred to this Court after creation of new State.

8- Heard the learned counsel for the parties and perused the record.

9- The learned Standing Counsel has argued that the accident had occurred due to sudden failure of brakes of the offending vehicle, hence the State cannot be held liable to make any payment of the

compensation. It was alleged that the Tribunal has awarded excessive amount of compensation.

10- The appellant/State has not disputed the involvement of the offending vehicle in the accident. The injuries to the claimant/respondent in the accident have also not been denied. So far as the question of failure of brakes of the offending vehicle, raised by the State, is concerned, the O.P. State has examined three witnesses before the learned Tribunal. D.W.1 Gulbir Singh is a motor mechanic who had repaired the vehicle in question prior to the accident on 17-6-1981. He has deposed that he had repaired the vehicle along with its brakes. D.W.2 H.C. M.T. Lali Chand had inspected the offending vehicle on 21-6-81 at about 5 11.30 A.M. and had submitted the inspection report at P.S. Malli Tal. However, no such report has been brought on record. Although this witness has deposed that the foot brake and hand brake of the vehicle were not properly working but on being cross-examined, he admitted that at the time of inspection of the vehicle, there was no air in the tyre-tubes and also admitted that without the air in the tyre-tubes the brakes cannot be checked. Therefore, no convincing evidence has been adduced on the point of failure of brakes of the vehicle.

11- D.W.3, Bishan Ram is the employee of Forest Department. He has deposed that at the time of accident he was sitting by the side of Mohan Singh, driver of the offending vehicle and at the spot there was a crowd of 20 to 25 persons and seeing the crowd, the driver tried to stop the vehicle by applying brakes, but the brakes did not work properly and the vehicle hit the back side of injured. On the other hand the

claimant has produced P.W.4, Govind Singh at whose shop the claimant was standing, is an independent witness. This witness has categorically stated that the offending vehicle was being driven rashly and negligently at a high speed. The injured has also deposed the rash and negligent act of the driver of the offending vehicle. In the present case the principle of 'Res ipse Loquitur' is applicable in full terms. The accident speaks for itself and tells its own story. The learned Tribunal has recorded categorical finding on this point and I do not find any infirmity in it. I am also of the considered view that the State/O.P has not been able to prove its plea regarding sudden mechanical defects in the offending vehicle. I do not find any force in the submission advanced by the learned Standing Counsel.

11- So far as the quantum of compensation is concerned, the injured, due to the accident, remained on leave from 21-6-1981 to 30-12-1981. In the accident he sustained lacerated wound on the left inguinal region. He was treated at B.D. Pande Hospital Nainital from 20-6-81 to 6-7-81 and thereafter at A.I.I.M.S. New Delhi, where he remained up to 26-9-1981. Even after the discharge from A.I.M.S., he again got treated himself at A.I.I.M.S. New Delhi, as out door patient for physiotherapy upto 27-2-1982. The claimant also suffered mental and physical agony due to the injuries sustained him. According to him he spent Rs. 31,800/- on his treatment. The learned Tribunal awarded Rs. 20,000/- towards pain, sufferings, mental agony and disability and Rs. 10,600/- as expenses incurred by him for his treatment. Looking the facts and circumstances of the case, the amount of compensation awarded in the case,

can not be said on higher side and hence does not require any interference.

12- The rate of interest awarded by the learned Tribunal also seems just and proper and requires no interference.

13- I do not find any force in this appeal and the same is liable to be dismissed.

14- Accordingly the appeal is dismissed. The impugned judgment and award dated 9-2-1983 rendered by M.A.C.T./Special Judge, Nainital, is hereby confirmed.

(B.C.Kandpal, J.)

Dated: 11-09-2006

ISB